IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Sattu @ Satya Narayan Vs. State of Rajasthan
(S.B. CRIMINAL APPEAL NO.1316/2003)

S. B. Criminal Appeal under Sec.374 (2) Cr.P.C. against the judgment dated 18-6-2003 in Sessions Case No.81/2002 passed by Sh. Ashok Kumar Saxena, RHJS, Additional Sessions Judge (Fast Track) No.2, Kota.

Date of Judgment: May 09, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA

Mr. Prithviraj Singh Rajawat, for the appellant.

Mr. M.L.Goyal, Public Prosecutor for the State.

BY THE COURT:

As per Parcha Bayan of injured Pappu, it was Sattu s/o Ghisi Lal, who made assault on him but unfortunately Sattu s/o Mishri Lal, appellant herein, was put to trial before learned Additional Sessions Judge (Fast Track) No.2, Kota, who vide judgment dated June 18, 2002 convicted and sentenced him under section 307 IPC to undergo five years rigorous imprisonment and fine of Rs.5000/- in default three months simple imprisonment.

2. On March 31, 2002 at 1.15 PM at MBS Hospital Kota Heera Lal, ASI Police Station Mahaveer Nagar recorded parcha bayan (Ex.P-1) of injured Pappu (Pw.1) wherein he stated that in night around 12 PM while he was sitting at Harijan Basti Keshavpura with Ram Dayal, Sattu s/o Ghisi Lal

came and inflicted Gandasa-blow on his forehead. On that parcha bayan case a case under sections 307 and 323 IPC was registered and investigation commenced. After usual investigation charge sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge (Fast Track) No.2 Kota. Charges under sections 323, 326 and 307 IPC were framed against the appellant, who denied the charges and claimed trial. The prosecution in support of its case examined as many as 14 witnesses. In the explanation under Sec.313 CrPC, the appellant claimed innocence. No witness in defence was however examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellant as indicated herein above.

3. Having heard the submissions and on scanning the record, I find that prosecution has failed to establish the accusation levelled against the appellant. In the Parcha Bayan (Ex.P-1) name of assailant was shown as Sattu s/o Ghisi Lal. In the formal FIR (Ex.P-11) in the column of accused name of Sattu s/o Ghisi Lal was incorporated. Ramesh Chand (Pw.12), who was posted as Sub Inspector in the intervening night of March 30 and March 31, 2002 at Police Station Mahaveer Nagar deposed in his cross examination thus:-

> "यह सही है कि मैंने जो तफतीश की उससे इस प्रकरण का मुलजिम सत्तू उर्फ सत्यनारायण आत्मज घासीलाल ही था। गवाहान द्वारा भी मारपीट सत्तू उर्फ सत्यनारायण आत्मज घासीलाल द्वारा ही मुझे मारपीट करना बताया था। मेरी तफतीश से सत्तू उर्फ सत्यनारायण आत्मज घासीलाल के खिलाफ जुर्म प्रमाणित था।"

Injured Pappu (Pw.1) in his examination in chief deposed as under:-

> "पुलिस अस्पताल में आई थी वहां पुलिस ने मेरा बयान लिया था। पर्चा बयान प्रदर्श-1 है, जिस

पर ए से बी मेरे हस्ताक्षर हैं।"

4. It also appears from the statement of Ramesh Chand (Pw.12) that Sattu s/o Ghisi Lal was arrested vide arrest memo (Ex.P-14) and on the basis of his disclosure statement (Ex.P-15) Gandasa allegedly used in commission of offence was recovered vide recovery memo (Ex.P-16).

5. Strangely Govind Singh SHO (Pw.13) released Sattu s/o Ghisi Lal pursuant to the direction of S.P. Bundi and recorded `Tetamba Bayan' (further statements) of the witnesses in order to implicate appellant. Learned trial Judge placed reliance on these statements and convicted the appellant ignoring the disclosure statement of Sattu s/o Ghisi Lal, recovery memo and Parcha Bayan of Pappu (Ex.P-1). In such a situation the appellant is entitled to benefit of doubt.

6. For these reasons, I allow the appeal and set aside the impugned judgment dated June 18, 2003 of learned Additional Sessions Judge (Fast Track) No.2, Kota. I acquit the appellant of the charge under section 307 IPC. Appellant Sattu @ Satya Narayan, who is in jail shall be set at liberty forthwith, if he is not required to be detained in any other case.

(Shiv Kumar Sharma)J.

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